

Exhibit

A

R O U G H T R A N S C R I P T

1 (Deposition Exhibit Nos. 4, 5, 7, 23-25,
2 27-29, 32-37, 48, 50-54, 59, 64 and 69
3 marked for identification by Ms. Amert.)

4 VIDEO TECHNICIAN: This is disk number one to the
5 video recorded deposition of Robert Johnston in the matter of
6 Robert Johnston, et al versus Dow Employees' Pension Plan, et
7 al, case number 1:14-cv-10427.

8 This deposition is being held at 715 East Main Street,
9 Midland, Michigan on July 16, 2015; the time is approximately
10 9:04 a.m. My name is Ed Boike, and I'm the videographer; the
11 court reporter is Heidi Cook. If counsel would please
12 introduce themselves for the record.

13 MS. AMERT: Amanda Amert from Jenner Block for the
14 Defendants.

15 MS. RENAKER: This is Teresa Renaker with Renaker
16 Hasselman, LLP for Mr. Johnston, and with me is Jacob
17 Richards.

18 ROBERT JOHNSTON,
19 having been first duly sworn, testified as follows:

20 EXAMINATION

21 BY MS. AMERT:

22 Q Good morning, Mr. Johnston. We met off the record, but on
23 the record I am Amanda Amert, and I'm one of the attorneys
24 who represents the Defendants in this lawsuit. You
25 understand you're here to have your deposition taken this

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1 you mentioned?

2 A Merrick Castille, M-e-r-r-i-c-k, and then Castille, with an E
3 on the end; C-a-s-t-i-l-l-e. Ah, finally got it. All
4 right. Participant 49 and Participant 50 . That's what I can
5 think of at the moment.

6 Q Okay. Thank you. Let's start with Participant 4 .

7 A Okay.

8 Q When did you communicate with Participant 4 about this lawsuit,
9 to the best of your recollection?

10 A Probably it would have been in the -- I'll just say
11 approximately in the fall of 2014.

12 Q And tell me about that communication?

13 A It was a phone call; I believe he called me. He had heard
14 about the lawsuit, and was asking me about it.

15 Q Do you know how he had heard about the lawsuit?

16 A That would be speculative.

17 Q Did he tell you how he heard about the lawsuit?

18 A I don't remember.

19 Q What do you recall discussing with him?

20 A That the dispute was over the way my benefits were
21 calculated, and I encouraged him to look at the documents
22 that were posted on my attorney's website to summarize the
23 case, and also encouraged him to contact them if he had
24 detailed questions.

25 Q And what did he say to you?

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- 1 A What did he say to me? To be honest -- well, the
2 conversation was about many other things because we were
3 former colleagues, and he was catching me up on some
4 acquaintances that we had, and so it had nothing to do with
5 the lawsuit. So he mentioned some of those kinds of things,
6 the health of some of our former colleagues and so forth.
7 Specific to the lawsuit, I don't remember what he might have
8 said to me.
- 9 Q Have you spoken with Participant 4 about the lawsuit since that
10 fall 2014 phone call?
- 11 A I don't remember speaking to him since then.
- 12 Q Have you E-mailed with him or otherwise communicated with
13 him?
- 14 A I don't believe so.
- 15 Q What about Evelyn Morrison? Is Evelyn a man or a woman?
- 16 A Evelyn is a woman.
- 17 Q A woman. When did you speak with Ms. Morrison, or
18 communicate with Ms. Morrison?
- 19 A When did I speak to Evelyn about the lawsuit? It probably
20 would have been about that time, that same time frame,
21 maybe.
- 22 Q So about the fall of 2014?
- 23 A I'm trying to remember. No, it would have been earlier than
24 that; probably summer of 2014, somewhere in that time frame,
25 maybe. Late spring, early summer.

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- 1 Q And tell me about that communication.
- 2 A Again, that I was involved in a lawsuit with, you know, with
3 the Pension Plan over the benefits that I was to receive.
4 I'm trying to remember if there were any specific details,
5 other than just that I was involved in the lawsuit, but I
6 don't recall any.
- 7 Q Was this another telephone conversation?
- 8 A No, this would have been over lunch.
- 9 Q So you had lunch with Ms. Morrison in the summer of 2014?
- 10 A Somewhere in that range, yes.
- 11 Q And did Ms. Morrison already know about the lawsuit, or did
12 you bring it up?
- 13 A I don't remember that she did. I probably brought it up, but
14 I don't remember.
- 15 Q Did Ms. Morrison say anything to you about the lawsuit in the
16 course of your conversation?
- 17 A She may have asked some questions. I don't remember,
18 specifically.
- 19 Q Okay. Have you communicated with Ms. Morrison about this
20 lawsuit since that conversation?
- 21 A Yes, I believe so.
- 22 Q When did you next communicate with her about the lawsuit?
- 23 A Probably late 2014.
- 24 Q Okay. Tell me about that communication.
- 25 A I believe it was probably another lunch; we'd just meet once

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1 in a while for lunch together and just catch up on each
2 other's lives.

3 Q And Ms. Morrison is one of your former Dow co-workers?

4 A Yes.

5 Q Okay. When did you work together?

6 A Pretty much since about 1983.

7 Q And do you remember any of the substance that you discussed
8 with Ms. Morrison in late 2014?

9 A I don't remember, specifically. I'd be speculating.

10 Q Okay. Did you communicate with Ms. Morrison about this
11 lawsuit after that conversation in late 2014?

12 A I don't believe so, no.

13 Q Okay. Next you mentioned Participant 52 ?

14 A (Witness nodding head.)

15 Q Who is Participant 52 ?

16 A He is a chemist at Dow Chemical.

17 Q And when did you communicate with Participant 52 about this
18 lawsuit?

19 A I believe it would have been in probably December of 2014.

20 Q Tell me about that communication.

21 A At a Christmas party.

22 Q And what did you discuss about this lawsuit at the Christmas
23 party?

24 A If I remember right, I was probably asked what I'm doing with
25 my life, and I probably mentioned that one of the things

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1 taking quite a bit of my time right now is I was involved in
2 a lawsuit with Dow Pension Plan over pension benefits.

3 Q And did Participant 52 say anything to you about the lawsuit?

4 A I don't remember. He probably said, Good luck.

5 Q Did you discuss any of the details of the lawsuit with
6 Participant 52 ?

7 A I don't believe so.

8 Q Have you spoken -- is that the only time you've spoken with
9 Participant 52 about this lawsuit?

10 A Yes.

11 Q Have you communicated with him in any other way about the
12 lawsuit?

13 A I might have contacted him by E-mail.

14 Q You're saying you might have. Do you have --

15 A I don't remember.

16 Q Why would you have contacted him by E-mail about the lawsuit?

17 MS. RENAKER: Objection, calls for speculation.

18 You can answer if you know why you did, if you know that you
19 did and why you did, but you shouldn't speculate about why
20 you would have, if you did, if you don't know whether you did
21 or not.

22 THE WITNESS: I don't know if I did or not.

23 Q (BY MS. AMERT) You said your might have contacted him by
24 E-mail. So what I'm trying to get at is, why you think you
25 might have contacted him by E-mail about the lawsuit, but are

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1 not sure?

2 A I might --

3 THE WITNESS: Can I answer this question?

4 MS. RENAKER: Yeah.

5 THE WITNESS: I might have contacted him to ask him
6 to read the documents on my attorney's website, to be aware
7 of the lawsuit.

8 Q (BY MS. AMERT) Was there a point in time when you were
9 contacting a number of your former colleagues and asking them
10 to read the materials on your attorney's website?

11 A I can't answer that question, I don't believe.

12 Q What don't you understand about the question?

13 MS. RENAKER: Do you -- I think that Mr. Johnston
14 may want to have a discussion with me about an issue of
15 privilege, so maybe we could step outside and do that. If
16 that's the case -- are you confused about a privilege
17 question?

18 THE WITNESS: Yes.

19 MS. AMERT: Okay. Sure. Let's take a short break
20 so you can do that.

21 VIDEO TECHNICIAN: Off the record at 9:48.

22 (Off the record discussion.)

23 VIDEO TECHNICIAN: We are back on the record at
24 10:06.

25 Q (BY MS. AMERT) Mr. Johnston, before we took a break so that

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1 you could confer with your counsel, we had been talking about
2 your communications with Participant 52 , and I believe I had
3 asked you whether there was a point in time when you were
4 communicating with a number of your colleagues about this
5 lawsuit. Do you remember that?

6 A Yes.

7 Q Are you prepared to answer that question now?

8 A Yes.

9 Q What's your answer?

10 A So I'm not sure of the exact timing. I think it was
11 somewhere in the range of summer of 2014, I sent an E-mail to
12 as many of my former colleagues who had worked at Dow, and
13 gone to work at DuPont Dow Elastomers and had returned to
14 Dow, to basically do two things: Let them know that I was
15 involved in a lawsuit about my pension benefits, and that
16 they might be interested to read the documents on my
17 attorney's website to summarize the case, and to contact them
18 if they had questions about the case.

19 Q When you say contact them, you mean contact your counsel?

20 A Yes.

21 Q You have made reference to documents that have been produced
22 in this litigation earlier in your testimony, so from that I
23 gather you have an understanding that there are certain
24 documents that you provided to your counsel so that they
25 could be produced in this case, is that correct?

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- 1 A Yes.
- 2 Q Do you know whether the E-mail that you've just described has
3 been produced in this lawsuit?
- 4 A I don't know.
- 5 Q Did you provide that E-mail to your counsel?
- 6 A Yes.
- 7 Q Did you receive responses from the recipients of that E-mail?
- 8 A Well, I asked them to contact my attorneys, but I did get
9 probably a couple responses directly to myself asking about
10 my E-mail.
- 11 Q Who responded?
- 12 A Participant4 was one, and that's the nature of the phone call
13 that I talked about.
- 14 Q Other than Participant4, do you remember anyone else
15 specifically who responded to you?
- 16 A I don't. I believe there was at least one other person, but
17 I just don't remember who it was. I got very few direct
18 responses, because I really asked them to contact my
19 attorneys.
- 20 Q When you said you believed there was at least one other, do
21 you have any recollection of whether that was a phone call or
22 an E-mail, or some other type of communication?
- 23 A It would have been a phone call.
- 24 Q Do you have a specific recollection of another phone call?
- 25 A No.

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1 Q Okay. All right. So going back to Participant 52 , you'd
2 previously mentioned that you had a conversation with him at
3 a Christmas party in December of 2014, and then I take it
4 he's one of the people who was a recipient of the E-mail that
5 we just can discussed?

6 A Yes.

7 Q Have you had any other communications with Participant 52 about
8 this lawsuit?

9 A No.

10 Q You also mentioned Participant 21 . Is that a man or a woman?

11 A It's a man.

12 Q And when did you communicate with Participant 21 about this
13 lawsuit?

14 A So he was also on this E-mail.

15 Q Other than the E-mail that we've previously discussed, have
16 you had any other communications with Participant 21 about this
17 lawsuit?

18 A I believe he was at the Christmas party; there were a number
19 of former colleagues at this Christmas party, and several of
20 them asked me about it.

21 Q Do you remember any specific comments or questions from
22 Participant 21 at the Christmas party?

23 A No. I mean, basically, several people would have asked me,
24 you know, How's it going kind of thing, and I would have
25 responded. I mean, I believe I responded, probably, that,

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1 you know, the lawsuit is under way and I can't really talk
2 about it in detail at this time.

3 Q Was this a group conversation, or do you remember a series of
4 individual --

5 A Yes, a series of individual conversations.

6 Q Thank you.

7 A Or small groups, you know, clusters.

8 Q Okay. Other than that Christmas party conversation and the
9 E-mail, have you had any other communications with Participant 21
10 about this lawsuit?

11 A No, I don't think so.

12 Q The next person you mentioned is Participant 27 ?

13 A Yes.

14 Q When did you communicate with Participant 27 bout this lawsuit?

15 A I believe it would have been the same way as the other ones.

16 I included him on the E-mail that I sent out. I also had
17 a -- I know I specifically had a phone conversation with him.

18 Q When was that phone conversation?

19 A I don't remember, but it would have been sometime between the
20 E-mail and the Christmas party.

21 Q Okay. So the E-mail was in the summer of 2014, and the
22 Christmas party was in December of 2014, so --

23 A I'll even say spring/summer of 2014, I think it's somewhere
24 in that range.

25 Q So the phone conversation that you recall, did you call

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1 Participant 27 or did he call you?

2 A Let me put it this way: I still live in the community that
3 I've worked since 1981, and I've worked with many of these
4 people for a number of years, and so I still have ongoing
5 social contact with some of them as good friends. Participant 27
6 is one of those, and we have had some conversations in
7 grocery stores, or running into each other at events,
8 Christmas parties or other events.

9 There have been phone conversations, because we were
10 scheduling to get together for a Domino tournament. So in
11 the context of one of those calls, and I don't remember if he
12 initiated or I did, it wasn't to specifically discuss the
13 lawsuit, but we would have had a conversation, and this would
14 have been one of the topics, so I can't tell you who actually
15 made the call.

16 Q What do you remember discussing about this lawsuit during
17 that call?

18 A With Participant 27, I -- he was a recent retiree, retired near
19 the time I did. And I believe I asked him for a little more
20 detail on what his benefit was, and what options he chose for
21 the distribution of payout options. And I don't remember the
22 specific details, though, of what that was, but I know -- I
23 did have a little more detailed conversation with

24 Participant 27.

25 Q When you say you don't remember the detail of what that was,

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1 do you mean you don't remember how he responded to your
2 questions?

3 A He shared information with me, but I don't remember what it
4 was.

5 Q Okay. Did you discuss anything -- do you remember discussing
6 anything with him about the substance of this lawsuit, as
7 opposed to his own retirement decisions?

8 A Well, I guess the simple answer is yes.

9 Q What did you discuss?

10 A I think I mentioned it, but I mean, I wanted to learn more
11 about his benefit calculation so I could understand how it
12 was done in comparison to how mine is done. And so he shared
13 with me some information, I just don't remember the details
14 of exactly what I received.

15 Q Did --

16 A I know he didn't have enough information for me to be able to
17 do the calculation myself to compare.

18 Q Okay. Did Participant 27 say anything to you about the lawsuit?

19 A I don't think so. I mean, he was aware it was going on, he
20 knew why I was asking information, but I don't think we
21 discussed the -- there wasn't much information for me to
22 share.

23 Q Okay. Other than what you've just told me, did you and
24 Participant 27, in this phone conversation, discuss anything else
25 relating to the lawsuit?

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1 A I don't think so.

2 Q Other than the E-mail that you sent to your former colleagues
3 about the lawsuit, and this phone conversation, have you had
4 any other communications with Participant 27 about this lawsuit?

5 A That phone conversation might have been two; I don't
6 remember. There were some communication in a period of, a
7 short period of time when I was trying to get some
8 information from him, and there was a little back and forth,
9 and I don't remember specifically, exactly how many
10 communications that was, but I believe it was in the nature
11 of phone call or calls.

12 Q Why were you trying to get information from him?

13 A Because I wanted to know -- I wanted to understand how his
14 calculation was done in comparison to how mine was done.

15 Q What information were you asking him for?

16 MS. RENAKER: Objection, asked and answered.

17 MS. AMERT: She's going to object periodically.

18 MS. RENAKER: You can answer.

19 MS. AMERT: And you should go ahead and answer, and
20 she'll stop me if I'm giving you a bad instruction, but you
21 should go ahead and answer unless she specifically instructs
22 you not to, if you understand my question.

23 THE WITNESS: Okay.

24 Q (BY MS. AMERT) So my question was, what information were you
25 asking him for?

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- 1 A I would have liked to have had enough information to be able
2 to calculate his benefit, according to the same method that
3 Dow had used to calculate mine, and see how it compared.
- 4 Q And did he provide you with that information?
- 5 A Not all of it, so I wasn't able to do the calculation.
- 6 Q Okay. Other than what we've just discussed, did you have any
7 other communications with Participant 27 about this lawsuit?
- 8 A No.
- 9 Q Okay. I'm going to move on to the next person, and I wrote
10 all of the names down that you listed, but I don't
11 necessarily have them in exactly the same order that you
12 listed them, so I'll do my best.
- 13 A There was no significance to the order.
- 14 Q Okay. I believe the next person you mentioned was Merrick
15 Castille?
- 16 A Merrick hosted the Christmas party.
- 17 Q Did you also -- was Merrick also copied on the E-mail that
18 we've been discussing?
- 19 A I don't think so.
- 20 Q Is Merrick another of your former co-workers from Dow?
- 21 A Yes.
- 22 Q What do you remember -- I'm assuming that you talked with
23 Merrick at the Christmas party about this lawsuit. Is that a
24 fair assumption?
- 25 A I think so.

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- 1 Q What do you remember discussing with Merrick?
- 2 A Nothing. I don't have any recollection of what was
- 3 discussed.
- 4 Q Other than the Christmas party, have you had any other
- 5 communications with --
- 6 A No.
- 7 Q I know you're going to know where I'm going with these
- 8 questions, but I'm going to ask you to let me finish --
- 9 A I'm sorry.
- 10 Q -- so that --
- 11 A Yes.
- 12 Q It will be less obvious in the transcript, so --
- 13 A I'm sorry.
- 14 Q To finish my question --
- 15 A Yes.
- 16 Q -- did you have any other communications with Merrick
- 17 Castille about this lawsuit, other than the Christmas party?
- 18 A No.
- 19 Q Thank you. Why didn't you include Merrick Castille on your
- 20 E-mail to your former colleagues?
- 21 A Merrick -- well, first of all, I think my statement was that
- 22 I don't remember if I did or did not --
- 23 Q Okay.
- 24 A -- include him.
- 25 Q Okay.

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1 A But I'll go ahead and answer it for you, just to be nice.

2 Q Sure.

3 A I don't believe that I included him on the E-mail, and the
4 reason would have been because Merrick Castille did not
5 return to Dow in 2005. He was Dow employee, went to DDE, and
6 did not come back to Dow.

7 Q Okay. The next person you mentioned was James Hayes?

8 A Yes.

9 Q What communications have you had with Mr. Hayes about this
10 lawsuit?

11 A So I had -- James Hayes was included on the E-mail, but I
12 believe before the E-mail, to be honest, I just don't
13 remember the exact timing, but James Hayes retired from Dow
14 in that time frame. And so I did reach out to James to let
15 him know that I had questions about how the benefit was
16 calculated. And that he might want to look into this and
17 talk to an attorney, if need be to -- because there was a,
18 you know, a specified deadline for filing an appeal, and so I
19 wanted him to know that I was involved in an appeal process
20 and a litigation, and that he might want to look into that.

21 So in my conversation with James, I believe I summarized
22 just the key issues that I had disputes on. And he also
23 provided me a little of his salary history information so
24 that I could, again, see how his benefit was calculated
25 relative to what I might have expected it should be. And to

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- 1 try to -- and to specifically resolve some erroneous
2 statements that seemed to exist on Dow Pension Estimate Forms
3 generated by the PAS Modeler that Dow uses.
- 4 Q Okay. Believe it or not, we're going to go through that in a
5 little more detail.
- 6 A I believe it.
- 7 Q First, you said that Mr. Hayes retired from Dow in that time
8 frame. What time frame do you mean?
- 9 A I hate to speculate when I know the documentation exists on
10 paper, but I believe it was somewhere in the early 2014
11 period, but I don't remember specifically.
- 12 Q We all understand that the human memory is fallible,
13 especially about dates, so when -- you should do what you're
14 doing in answering my questions, and give me your best
15 recollection, understanding that you're right, there are
16 documents, and if we need the dates exactly, we can track
17 them down.
- 18 A I'm sure they're more reliable than my memory.
- 19 Q They're not always, actually, but I appreciate you're doing
20 your best, especially with dates. You said that you reached
21 out to Mr. Hayes?
- 22 A I did.
- 23 Q How did you do that?
- 24 A I called him, and then I went and visited him at his home.
- 25 Q And did both the call and the visit happen in about that

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1 early 2014 time frame?

2 A Yes, they were probably a couple weeks apart or something
3 like that.

4 Q You said you summarized some key issues for him?

5 A (Witness nodding head.)

6 Q What were those key issues?

7 A I probably discussed with him concerns about the, you know,
8 93 percent salary factor, the proration versus carve out
9 approach to dealing with the DDE pension benefit.

10 In his case, he was early retirement eligible from DDE,
11 so that was different than me. And there was a statement in
12 the PAS Modeler output for his pension benefit estimate,
13 which contradicted the Plan Document. And I was trying to
14 understand if his benefit was calculated, the benefit that he
15 received was calculated according to the Plan Document or
16 according to the method given in the statement that was in
17 the PAS Modeler output.

18 Q The PAS Modeler is the on-line tool that Dow provides to
19 pension plan participants to estimate their benefits, is that
20 correct?

21 A Yes.

22 Q Do you know what PAS stands for?

23 A I don't.

24 Q Okay. It's P-A --

25 A Probably Pension something System.

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1 Q It's PAS?

2 A Administrative maybe. Yes.

3 Q What were the erroneous statements that you believed were on
4 the PAS Modeler?

5 A I couldn't quote it to you, but it had to do with the --
6 there was a paragraph, kind of caveat paragraph on the
7 statement that described how employees who were of certain
8 age, which corresponded to early retirement eligible under
9 the DuPont Plan, DuPont Dow Elastomers Plan, how their
10 calculation would be done. In the -- in the Dow Plan Section
11 10.46 there is a carve out provision that subtracts, you
12 know, a DuPont Dow benefit from the Dow benefit. And that
13 provision has a proration formula for adjusting the DuPont
14 Dow age 65 benefit down to whatever age the employee is when
15 they commence their Dow pension benefit. And there was, on
16 the PAS Modeler -- and this is the best of my memory. On the
17 PAS Modeler I believe there was a provision that altered that
18 in the case of employees who were, like, age 58 or age 60, or
19 something like that at the time they left DuPont Dow. And
20 that was not in the plan anywhere, in the Plan Document
21 anywhere, so I was curious to know which language was
22 followed in calculating his specific benefit.

23 Q Why were you curious about that?

24 A I was curious because, number one, James Hayes was a friend,
25 I'd worked with him for many years. He had some -- he was

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1 surprised by the -- he had a lower value for his pension
2 benefit than he expected, and he was surprised by that, and I
3 was trying to help him understand that. And I also wanted to
4 understand -- I had had questions about the accuracy of the
5 PAS Modeler statements, and this was another one, and I was
6 curious to know if it was accurate, and if it was followed,
7 or if the Plan Document was followed.

8 Q Did you reach a conclusion about that?

9 A Unfortunately, he had incomplete records and I wasn't able
10 to.

11 Q If I understand the time frame correctly, this conversation
12 took place relatively shortly after Mr. Hayes retired, is
13 that correct?

14 A Yes.

15 Q And you mentioned, I think, that you advised him that he had
16 a relatively short period of time to appeal his pension
17 determination?

18 A I don't recall that I advised him of that, but I knew that
19 might be an issue.

20 Q But you don't recall whether you told him that?

21 A I don't remember.

22 Q Do you remember any discussion with him about appealing his
23 benefits determination?

24 A I don't remember any discussion, but it seems probable that I
25 would have.

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1 Q Okay.

2 A But I'm speculating.

3 MS. RENAKER: Yeah, we don't want you to guess or
4 speculate.

5 Q (BY MS. AMERT) Do you know whether he submitted an appeal of
6 his pension?

7 A I do not know.

8 Q What did Mr. Hayes say to you about his pension benefit
9 during this discussion?

10 A The point that I mentioned, that he was concerned that it
11 seemed that the benefit was lower than he had expected. He
12 also described to me what payout options he had selected, and
13 when he had commenced his benefit from DuPont Dow. When his
14 next dive trip was.

15 Q I did ask if, what he said to you about his pension
16 benefits. I understand --

17 A His concern was that he might not have enough money to go on
18 the dive trip he planned because his benefit was lower than
19 he anticipated.

20 Q I see. Did he explain to you why he expected a higher
21 benefit?

22 A He didn't explain why, he just thought he was going to
23 receive a higher one than he did. My impression was that
24 James Hayes was not very knowledgeable about the details of
25 either of the Dow or the DuPont Dow pension plans, nor how to

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1 optimize the benefit selection.

2 Q Did you and Mr. Hayes specifically discuss your lawsuit over
3 your pension benefits during this conversation?

4 A Again, what exactly do you mean by specifically, but he knew
5 I was involved in the lawsuit, and I, I tried not to go into
6 details of my lawsuit with anybody during this period of
7 time, so I would have probably told him -- well, again, I
8 won't speculate, but I think I told him that, you know, the
9 lawsuit was filed and it was ongoing.

10 Q Did you discuss with him whether he might be a member of the
11 Proposed Class in this lawsuit?

12 A I believe I probably told him that he might be.

13 Q Do you remember him responding to that in any way?

14 A Yes.

15 Q How did he respond?

16 A He didn't want to get dragged into litigation. Primarily he
17 didn't want to have any financial risk, because he was
18 concerned about his situation.

19 Q Other than your E-mail to your former colleagues and this
20 conversation that you've just described, have you had any
21 other communications with Mr. Hayes about this lawsuit?

22 A No. No, I take that back. He was also at the Christmas
23 party, but I mean, sorry, but that's a given for quite few of
24 them.

25 Q It sounds like a good Christmas party, actually. I'm sad I

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1 wasn't invited.

2 A Next year. If you settle, favorably.

3 Q Do you recall any specific discussion with Mr. Hayes at the

4 Christmas party about this lawsuit?

5 A No.

6 Q The next person you mentioned is Participant 10 . When did you

7 communicate with Participant 10 about this lawsuit?

8 A Participant 10- oh, I copied Participant 10 on the E-mail.

9 Q Participant 10 is another of your former Dow co-workers?

10 A Yes.

11 Q And why did you copy him on the E-mail?

12 A Because I thought he would be interested.

13 Q Why did you think he would be interested?

14 A Because he had been a Dow employee, DuPont Dow employee and

15 Dow employee.

16 Q Do you know whether Participant 10 is still working at Dow?

17 A He is not.

18 Q Is he retired?

19 A I believe so. I don't -- define retirement, besides going to

20 France.

21 Q That actually sounds pretty good for a definition to me. Do

22 you know that he is working at any other company?

23 A Yes, he is.

24 Q Where is he working?

25 A I believe he's working for Sadara, which is a Dow joint

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1 venture with, I'm not sure, a Saudi oil company, or some
2 Saudi entity.

3 Q Do you know whether Participant 10 has commenced his Dow pension?

4 A I don't know, as of this date.

5 Q Other than copying Participant 10 on your E-mail, have you had
6 any other communications with him about this lawsuit?

7 A No.

8 Q Did Participant 10 respond to your E-mail?

9 A I don't think so, to me. I don't know about communications
10 my attorneys may have had with these individuals.

11 Q Was he at the Christmas party?

12 A I'm trying to remember. I believe he was. I think he was
13 getting ready to leave, in fact, like the next week, for
14 Saudi Arabia for a long time.

15 Q Do you recall any specific conversation with Participant 10 about
16 this lawsuit at that Christmas party?

17 A I don't.

18 Q Have you had any other communications with Participant 10 about
19 his Dow pension benefits?

20 A Yes.

21 Q When did that happen?

22 A When I had heard that he retired, and by retired I just said
23 I wasn't sure if he received his benefits, but I mean he
24 had -- I understood that he had retired from Dow, and I
25 believe that would have probably been, shoot -- I believe it

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1 was sometime in 2012 or something like that, maybe even 2013,
2 but I don't remember, it's not clear to me. It was before
3 the lawsuit was in play.

4 Q When you say before the lawsuit was in play, do you just mean
5 before the Complaint was filed in this case?

6 A I had filed an appeal, my administrative appeal. I believe
7 it was -- I believe it was while, in the period while I was
8 waiting for a response on my appeal.

9 Q Okay. So you heard that Participant 10 had retired?

10 A Yes.

11 Q And did you reach out to him?

12 A Yes.

13 Q How did you do that?

14 A By phone.

15 Q You called him?

16 A Yes.

17 Q And what did you say?

18 A I had -- again, I went through the issues that I had raised
19 in my appeal pretty much item-by-item, and reviewed them with
20 him, and discussed what my concerns were and, again, with the
21 intent that if any of those were concerns to him and he
22 wanted to pursue an administrative appeal, you know, he might
23 be under some deadline to do so, so I wanted to share with
24 him my concerns and let him know of timing issues.

25 Q How did Participant 10 respond?

R O U G H T R A N S C R I P T

- 1 A At that time he had not commenced benefits, so he was in a
2 different situation. So, basically, I think he said he was
3 basically going to take it under advisement, you know, but I
4 don't believe he was going to do anything afterwards.
- 5 Q Do you remember anything else that you discussed with
6 Participant 10 pertaining to his pension benefits?
- 7 A Well, I mean, again, I went through my appeal document,
8 pretty much item-by-item, so it was mixed into the
9 conversation. That's all I remember.
- 10 Q Do you remember anything else that Participant 10 said about what
11 you told him, other than he would take it under advisement?
- 12 A No.
- 13 Q Have you had any other communications with Participant 10 about
14 his pension benefits?
- 15 A No, other than what I already described to you.
- 16 Q Have you had any further communications with Participant 10 about
17 this lawsuit since you sent your E-mail to former colleagues?
- 18 A No.
- 19 Q You also mentioned Steve Edmondson?
- 20 A Yes.
- 21 Q Is Mr. Edmondson another of your former Dow colleagues?
- 22 A Yes.
- 23 Q What -- how have you communicated with Mr. Edmondson about
24 this lawsuit?
- 25 A I had lunch with him, and at that lunch we were catching up

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1 on each other's lives and, again, I mentioned that I was
2 involved in this litigation, and that was taking quite a bit
3 of my time.

4 Q Are you describing one lunch or more than one lunch?

5 A One lunch.

6 Q About when did that lunch take place?

7 A I believe it was maybe January or February of this year,
8 something like that.

9 Q Okay. Did Mr. Edmondson say anything about the lawsuit to
10 you?

11 A I don't remember anything specific.

12 Q Have you had any other communications with Mr. Edmondson
13 about the lawsuit?

14 A No.

15 Q Was Mr. Edmondson included on your E-mail to your former
16 colleagues?

17 A No.

18 Q Why did you not include him?

19 A He was a Dow employee who went to work for DuPont Dow
20 Elastomers and did not return to Dow.

21 Q Was Mr. Edmondson at the Christmas party in 2014?

22 A No.

23 Q The next person you mentioned is Rajan Vara. Do I have that
24 right?

25 A R-a-j-a-n, V-a-r-a.

R O U G H T R A N S C R I P T

- 1 Q Who is Mr. Vara?
- 2 A He is another chemist, polymer scientist.
- 3 Q Is he one of your former Dow colleagues?
- 4 A Yes.
- 5 Q Does he still work for Dow?
- 6 A No.
- 7 Q Is he retired?
- 8 A Yes.
- 9 Q Does he work for anyone else now?
- 10 A I don't know.
- 11 Q When did you communicate with Mr. Vara about this lawsuit?
- 12 A I'm going to guess -- well, I'm not going to guess. I think
- 13 there were two occasions. I think the first was probably
- 14 somewhere around the May 2014 time frame, maybe, and then the
- 15 other one in, like, October 2014, something like that,
- 16 perhaps. And that may not be right. The October one for
- 17 sure; the May one might have been earlier, I think like --
- 18 sorry.
- 19 Q In your first conversation with him, or in your first
- 20 communication with him, which may have been around May of
- 21 2014, how did you communicate with him?
- 22 A Over lunch.
- 23 Q What did you discuss about this lawsuit?
- 24 A Again, that I was involved in litigation with Dow about my
- 25 pension benefit. That I was hoping that other people that

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1 were in DuPont Dow Elastomers that were similarly situated
2 might be able to benefit from my efforts, and that I was
3 sorry that he was not one of those.

4 Q Why was he not one of those?

5 A He was not a Dow employee before DuPont Dow Elastomers.

6 Q What did Mr. Vara say to you about the lawsuit?

7 A I don't remember anything specifically. Again, this is a
8 social conversation, catching up with old friends kind of
9 thing.

10 Q And in that first lunch conversation, do you recall any other
11 specific discussions about the lawsuit?

12 A No.

13 Q Did you discuss Mr. Vara's pension benefits with him?

14 A No.

15 Q The second conversation you said you were sure was in, or the
16 communication, sorry, you said you were sure was in October
17 of 2014?

18 A September, October of 2014.

19 Q Tell me about that communication.

20 A Again, it was over lunch, catching up on our lives. And he
21 probably asked me how it was going, and I probably said,
22 again, I don't remember specifically what the conversation
23 was, but --

24 Q Did you discuss the substance of the lawsuit?

25 A No.

R O U G H T R A N S C R I P T

- 1 Q Is there a particular reason that you recall specifically
2 that this lunch was in September or October of 2014?
- 3 A Yes.
- 4 Q What is that?
- 5 A Travel.
- 6 Q Okay.
- 7 A Fall colors.
- 8 Q Okay.
- 9 A Mr. Vara lives in Pennsylvania.
- 10 Q Other than the two lunch conversations you've just described,
11 have you had any other communications with Mr. Vara about the
12 lawsuit?
- 13 A Not that I remember.
- 14 Q Was he copied on your E-mail to your former colleagues?
- 15 A No.
- 16 Q Was he at the Christmas party?
- 17 A No.
- 18 Q You also mentioned Gary Williams?
- 19 A Yes.
- 20 Q Who is Mr. Williams?
- 21 A Gary Williams is another polymer scientist, chemist.
- 22 Q Is he another of your former Dow colleagues?
- 23 A I don't believe so.
- 24 Q How do you know Mr. Williams?
- 25 A I used to work with him.

R O U G H T R A N S C R I P T

1 Q Where?

2 A At DuPont Dow Elastomers.

3 Q When --

4 A My wife also teaches his daughter flute lessons, and I also
5 ride a bicycle with him.

6 Q When did you communicate with Mr. Williams about this
7 lawsuit?

8 A So, I believe once while he was at my home waiting to pick up
9 his daughter after a flute lesson, we were just sharing
10 information about what was going on in each other's lives,
11 and I mentioned I was involved in this litigation.

12 Q Did you tell him anything about the substance of the
13 litigation?

14 A No, just that we were disputing the calculation of benefits.

15 Q Did Mr. Williams say anything to you about the litigation?

16 A I believe he, he wished me success.

17 Q Do you remember about when this conversation took place?

18 A Oh, shoot. No.

19 Q Okay.

20 A He comes every week, so I don't remember which one.

21 Q Do you remember whether there was more than one conversation
22 along these lines?

23 A I don't remember. It's not a subject of ongoing discussion,
24 certainly.

25 Q And did you have any other communications with Mr. Williams

R O U G H T R A N S C R I P T

1 about this lawsuit?

2 A I don't think so.

3 Q You also mentioned Antenneh Worku?

4 A Uh-huh.

5 MS. RENAKER: You need to answer with a yes or no.

6 THE WITNESS: I'm sorry. Yes.

7 Q (BY MS. AMERT) And is that a man or a woman?

8 A That's a man.

9 Q So who is Mr. Worku?

10 A He is a chemist.

11 Q Is he one of your former Dow colleagues?

12 A Yes.

13 Q When did you communicate with Mr. Worku about this lawsuit?

14 A I don't remember, it was probably -- it was sometime in 2014.

15 Q How did you communicate with him?

16 A Over lunch. I eat a lot.

17 Q Tell me what, about this lawsuit, you discussed at that

18 lunch?

19 A Again, that I was involved in litigation. Yeah, that's all I

20 can really remember, specifically. I think there might have

21 been some discussion about discrimination, but I don't -- I

22 don't recall, specifically, the details.

23 Q What type of discrimination?

24 A Age discrimination.

25 Q You said that you don't recall any of the details. What do

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1 you recall about a discussion of age discrimination?

2 A What I recall was that there were concerns within his
3 organization about age discrimination for some employees, and
4 so he was interested in whether that was an aspect of our
5 litigation.

6 Q And when you say his organization, what are you referring to?

7 A The unit within Dow Chemical in which he works.

8 Q Do you know what the name of that unit is?

9 A I don't know today. At that time it was -- well, I'll give
10 it a generic name, and you can figure it out. It was Epoxy
11 R & D, but I don't know what they call themselves, actually.

12 Q Is Mr. Worku still employed by Dow?

13 A Yes.

14 Q Did you have any other communications with Mr. Worku about
15 this lawsuit?

16 A Yes.

17 Q What were those?

18 A It would have been another lunch and, again, that one would
19 have been just a social, you know -- well, as they both were,
20 but I'm sure he -- there was lawsuits ongoing, you know, just
21 nothing specific.

22 Q So you're saying you don't remember any specifics that were
23 discussed, just that the lawsuit was mentioned?

24 A No. Typically, when people ask me what's going on in my
25 life, what am I doing, because people always ask what are you

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1 doing when you're retired? I'm traveling, I'm researching
2 things on line, and I'm involved in a pension litigation.
3 That's kind of my answer. That's my life right now. So it
4 comes up in the very generic sort of way with many people,
5 but we don't get into specifics.

6 Q Other than the two lunches you've just described, have you
7 had any other communications with Mr. Worku about this
8 lawsuit?

9 A It's going to make an interesting video recording. No, I
10 don't think so.

11 MS. AMERT: Let's take a short break.

12 VIDEO TECHNICIAN: Off the record, 10:59.

13 (Whereupon, a short break was taken.)

14 VIDEO TECHNICIAN: We are back on the record at
15 11:11.

16 Q (BY MS. AMERT) Mr. Johnston, before we took our break we
17 were talking about your conversations with Mr. Worku about
18 this lawsuit, and you had described two lunch conversations
19 from 2014. Other than those two conversations, have you had
20 any other conversations with Mr. Worku about this lawsuit?

21 A I don't remember any.

22 Q Was Mr. Worku a recipient of your E-mail?

23 A No.

24 Q Why not?

25 A He was not a DuPont Dow Elastomers employee.

R O U G H T R A N S C R I P T

- 1 Q Was Mr. Worku at the Christmas party in 2014 that you
2 previously described?
- 3 A No.
- 4 Q Have you ever had any discussions with Mr. Worku about his
5 pension benefits?
- 6 A No.
- 7 Q You also mentioned Participant 49 and Participant 50 , is that
8 correct?
- 9 A Yes.
- 10 Q Are the two of them married to one another?
- 11 A Yes.
- 12 Q Did you communicate with them individually or together?
- 13 A Let me answer it this way: They were on the E-mail, which I
14 presume they received in their individual mailboxes; they
15 were both at the Christmas party.
- 16 Q Did either of them respond to your E-mail?
- 17 A I don't remember.
- 18 Q Do you recall a specific discussion with either of them at
19 the Christmas party about this lawsuit?
- 20 A Same as with others, just if they asked, I would have said I
21 was involved in a lawsuit. I think they were obviously aware
22 because they received the E-mail, so --
- 23 Q But you don't remember saying anything specifically to them
24 about the lawsuit?
- 25 A I don't remember.

R O U G H T R A N S C R I P T

- 1 Q Or them saying anything specifically to you about the
2 lawsuit?
- 3 A I don't remember.
- 4 Q Other than that E-mail and the Christmas party, have you had
5 any other communications with Participant 49 about the lawsuit?
- 6 A No.
- 7 Q Have you had any communications with Participant 49 about her
8 Dow pension benefits?
- 9 A No.
- 10 Q Other than the E-mail and the Christmas party, have you had
11 any other communications with Participant 50 about the lawsuit?
- 12 A No.
- 13 Q Have you had any communications with Participant 50 about his
14 pension benefits?
- 15 A Actually, let me make a correction, if I may.
- 16 Q Of course.
- 17 A I think I did not copy Participant 50 on the E-mail.
- 18 Q Why do you think you did not copy him?
- 19 A I don't think he returned to Dow in 2005.
- 20 Q Before you made your correction, I believe I had asked you if
21 you had any conversations with Participant 50 about his pension
22 benefits?
- 23 A Not about his pension benefits.
- 24 Q About your pension benefits?
- 25 A No. You asked about the lawsuit.

R O U G H T R A N S C R I P T

1 Q Okay. I'll just start over.

2 A Okay.

3 Q It's repetitive for me, too, so I also get a little bit
4 lost.

5 Have you had any conversations, other than the E-mail
6 and the Christmas party, with Participant 50 about the lawsuit?

7 A I don't believe --

8 MS. RENAKER: Objection, misstates his testimony.
9 You can answer.

10 THE WITNESS: I don't believe I copied him on the
11 E-mail.

12 Q (BY MS. AMERT) Okay. Thank you. I understand, and I
13 appreciate that correction. Have you had any communications
14 with Participant 50 about his pension benefits?

15 A No.

16 Q Have you had any communications, other than the Christmas
17 party, with Participant 50 about your pension benefits?

18 A Again, I don't think that's what I told you a minute ago. We
19 talked about the lawsuit, not about my pension benefits.

20 Q I understand that. I'm actually asking you a different
21 question.

22 A Okay.

23 Q I'm asking if you --

24 A Well, you --

25 MS. RENAKER: Can I --

R O U G H T R A N S C R I P T

1 MS. AMERT: Uh-huh.

2 MS. RENAHER: Let's let Ms. Amert finish her
3 question, and then I'll interpose an objection. Assuming I
4 don't instruct you not to answer, you can answer.

5 Q (BY MS. AMERT) If I've got this straight, you recall that
6 Participant 50 was at the 2014 Christmas party where you
7 discussed this lawsuit, correct?

8 A Yes.

9 Q And you don't have a specific recollection of talking, what
10 you said to him or he said to you about the lawsuit at that
11 Christmas party, correct?

12 A Yes.

13 Q Have you discussed the lawsuit with Participant 50 at any other
14 point in time?

15 A No.

16 Q Have you discussed your pension benefits with Participant 50 at
17 any other point in time?

18 A No.

19 MS. RENAHER: So I'm going to object that that's,
20 potentially, a very broad period of time. And you've said at
21 any period of time, but wondering, I'm thinking it's a little
22 vague as to time. You can answer.

23 THE WITNESS: And I'm glad you said that, because
24 in my mind I was still thinking in terms of the lawsuit time
25 frame, but I don't remember having any discussion with

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- 1 Participant 50 ever about pension benefits.
- 2 Q (BY MS. AMERT) You said that Participant 49 was included on
- 3 your E-mail, correct?
- 4 A Yes, I believe so.
- 5 Q Have you had any communications with Participant 49 , other than
- 6 that E-mail, about whether she might be a member of the Class
- 7 on whose behalf your bringing this lawsuit?
- 8 A Have I ever said that? I mean, you're changing your question
- 9 from what I said before that was in the E-mail, but --
- 10 Q Do you understand my question?
- 11 A I understand your question, but you're -- you're saying I
- 12 said something that I didn't say.
- 13 Q What -- I didn't intend to do that. What do you think I
- 14 misstated?
- 15 A That I think you said the E-mail was about whether people
- 16 were potential class members. I didn't say that. I think I
- 17 said that the E-mail told people that I was involved in
- 18 litigation, that there was information on my attorney's
- 19 website about the litigation, and that they were encouraged
- 20 to contact them about the litigation.
- 21 Q Thank you for that clarification. My question now is whether
- 22 you have ever discussed with Participant 49 whether she might be
- 23 a member of the class on whose behalf you're bringing this
- 24 lawsuit?
- 25 A I don't believe so.

R O U G H T R A N S C R I P T

- 1 Q Okay. The last person that you mentioned when I asked who
2 you had had conversations about this lawsuit with was Manu
3 Rego. Am I pronouncing his name correctly?
- 4 A Yes.
- 5 Q And I believe you said you weren't sure whether you had
6 talked with Mr. Rego or not, correct?
- 7 A About the lawsuit.
- 8 Q About the lawsuit. Why do you think you might have talked to
9 him about the lawsuit?
- 10 A We had a social conversation over lunch after I retired, and
11 I think -- I'm trying to remember. He was concerned about my
12 well-being, and how I was doing after the termination, and I
13 probably misspoke, because I think I answered with respect to
14 the lawsuit and, really, I think my conversation with him was
15 well before the lawsuit, and it would have been with respect
16 to the pension benefit calculation, and the issues I had at
17 that time in terms of trying to get information from Dow that
18 I was seeking. So it really was more about my initial
19 information seeking in the appeal process. I probably
20 shouldn't have -- I think I misanswered your question
21 originally.
- 22 Q And if I understand you, you're recalling a conversation that
23 took place relatively soon after you retired?
- 24 A Yeah, so it was late 2011 sometime.
- 25 Q Did Mr. Rego say anything to you about your pension

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1 calculations?

2 A I don't think so. He wouldn't have been in a position to.

3 Q Other than the conversation you just described, have you had
4 any other conversations with Mr. Rego about your pension
5 benefits?

6 A No.

7 Q Have you had any conversations with Mr. Rego about this
8 lawsuit?

9 A I don't believe so.

10 Q Was Mr. Rego copied on your E-mail?

11 A No.

12 Q Was Mr. Rego at the Christmas party?

13 A No.

14 Q So we've just discussed the people who you were able to
15 recall this morning having had communications about this
16 lawsuit with.

17 A (Witness nodding head.)

18 Q In the course of our discussion, have you recalled any other
19 individuals who you may have had communications with?

20 A Nobody has popped into my mind, but I'm thinking right now --
21 I can say this: I know there were more people than I listed
22 here today on the E-mail distribution, but I don't recall who
23 they were.

24 Q How did you decide who to include on that E-mail
25 communication?

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- 1 A I was trying to include people who I knew had worked for, or
2 that I believed had worked for Dow, gone to work for DuPont
3 Dow Elastomers and then come back to Dow in 2005.
- 4 Q And just for clarity for the record, when we're talking about
5 the E-mail, we're talking about the E-mail that you sent in
6 the spring or summer of 2014, informing some of your former
7 colleagues that you had filed a lawsuit, and encouraging them
8 to look at your counsel's web Page, correct?
- 9 A Yes. And another name that comes to mind is Participant 41 .
- 10 Q Participant 41 was another recipient of your E-mail?
- 11 A I don't remember.
- 12 Q Okay. Why does his name come to mind now?
- 13 A If you could tell me how my memory works, we'd both be
14 happy. It popped in.
- 15 Q It popped in because you remember communicating with
16 Participant 41 about this lawsuit?
- 17 A Yes.
- 18 Q When did you communicate with Participant 41 about this
19 lawsuit?
- 20 A I don't remember. I would say probably the latter half of
21 2014, but --
- 22 Q How did you communicate with him?
- 23 A By telephone.
- 24 Q Did he call you, or did you call him?
- 25 A I called him. I think he returned my voicemail or something.

R O U G H T R A N S C R I P T

1 Q Why did you call him?

2 A He was the Vice-President for Manufacturing at DuPont Dow
3 Elastomers, and I wanted to know his employment history.
4 And, also, since he was involved in the formation of DDE, at
5 a leadership level, I was trying to get clarity on the time
6 line of that process.

7 Q What did you discuss with Participant 41 ?

8 A The, the question I think I had for Participant 41 was whether
9 manufacturing personnel at the -- let me just say, personnel
10 at our manufacturing plants that were associated with DuPont
11 Dow Elastomers had formation, if those personnel were DuPont
12 Dow Elastomers personnel or Dow's personnel. And if the
13 latter, when they became DuPont Dow personnel, if they did.

14 Q Why did you want to know that?

15 A I wanted to know that because I wanted to understand what
16 personnel might be involved in the asset transfer referred to
17 in Section 10.46.

18 Q What did Participant 41 tell you?

19 A I believe the answer was that manufacturing personnel never
20 were DuPont Dow Elastomers' employees, as I thought they had
21 become.

22 Q Can you explain to me who you mean when you say the
23 manufacturing personnel?

24 A Operators, foremen, that kind of thing, people that operate
25 the manufacturing plant.

R O U G H T R A N S C R I P T

1 Q What else did you and Participant 41 discuss?

2 A I believe that's all. I mean, I'm sure I mentioned I was
3 involved in litigation about pension benefits. I don't
4 remember anything specifically but, of course, I was, you
5 know, I needed to set the stage for why I was having the
6 contact with him, so --

7 Q Do you remember anything else he said to you?

8 A No.

9 Q Okay. Is Participant 41 still employed by Dow?

10 A No.

11 MS. RENAKER: You need to let her finish her
12 question, and give me a moment just in case --

13 THE WITNESS: Sorry.

14 MS. RENAKER: -- there's something objectionable,
15 although, generally there's not.

16 Q (BY MS. AMERT) Do you know where Participant 41 works now?

17 A Can we back up a minute?

18 Q Sure.

19 A Reask your last question.

20 Q I asked if he still works for Dow?

21 A I don't know.

22 Q Okay.

23 A Because the question is not properly framed, I guess.

24 Because I'm not sure he -- you say still works for Dow; I'm
25 not sure he did work for Dow after DuPont Dow.

R O U G H T R A N S C R I P T

1 Q Okay?

2 A I don't know that, frankly. I believe he's retired now.

3 Q And I believe you said you did not copy him on your E-mail?

4 A I don't think so. I don't remember, though. I don't
5 remember.

6 Q Okay.

7 A I don't remember.

8 Q Have you had any other communications with Participant 41
9 about this lawsuit?

10 A No.

11 Q Have you had any communications with Participant 41 about your
12 pension benefits?

13 MS. RENAKER: Is that at any time?

14 MS. AMERT: Sure.

15 Q (BY MS. AMERT) Do you recall ever talking with Participant 41
16 about your pension benefits?

17 A What do you mean, talking with Participant 41 ? Could that
18 include a public presentation by Participant 41 ?

19 Q Sure.

20 A At which I was in the audience?

21 Q Sure.

22 A Because I don't recall Participant 41 having such a
23 presentation, but I do remember early in the formation
24 process for DDE, Senior Leadership was involved in a kind of
25 formation meeting, at which benefits were discussed by DuPont

R O U G H T R A N S C R I P T

1 benefit specialists and some Q and A afterwards with
2 Leadership, and I believe he was part of that team, but I
3 don't remember the specifics.

4 Q Okay. Other than that presentation, do you ever recall
5 communicating with Participant 41 about your pension benefits?

6 A No.

7 Q Okay. Other than the people we've just discussed --

8 A Yeah, another one popped in.

9 Q Okay.

10 A I'll let you finish.

11 Q No, go ahead. I would -- it's a question for after we finish
12 discussing all of the people who pop up, so who else did you
13 think of?

14 A Participant 45 .

15 Q Is that a man or a woman?

16 A It's a woman.

17 Q You recall communicating with Participant 45 about this lawsuit?

18 A Yes.

19 Q When did you communicate with Participant 45 about this lawsuit?

20 A I really don't remember. Between 2012 and 2014, inclusively.

21 Q How did you communicate with Participant 45 ?

22 A I believe it was by phone.

23 Q Tell me what you remember about that phone conversation?

24 A I, I was asking when she became a DuPont Dow employee, and if
25 she knew when other -- she was an office professional at

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1 DuPont Dow, and I was asking when other office professionals
2 became DuPont Dow employees.

3 Q Did you call Participant 45 or did she call you?

4 A Well, again, I initiated it. I don't remember if she was
5 returning my call or I directly called her, but I made the
6 first call.

7 Q What did she tell you?

8 A I don't remember.

9 Q Why were you interested in finding out when office
10 professionals became employees?

11 A Because it was my belief that -- I knew there was a class of
12 employees who had not come into DuPont Dow, that formation,
13 they came later, and I wanted to understand who was included
14 in that. And I should maybe -- well, I think I should say
15 this because it's a bit of a correction to what I said
16 earlier. I believe when you were asking me about Evelyn
17 Morrison you probably asked me if I had any other
18 conversations or so forth, and I probably said that was it,
19 but I do recall I also communicated with Evelyn Morrison on
20 the same question. She was a technologist in the
21 organization, and my concern was with, basically, with
22 non-exempt employees. And so office professionals and
23 technologists were in that group, and so I asked Participant 45 as a
24 representative of office professionals, and I asked Evelyn
25 Morrison as a representative of technologists, to help me

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1 understand when they became Dow employees, or DuPont Dow
2 employees. I'm sorry.

3 Q And why were you interested in that information?

4 A So I was interested in that information because I was trying
5 to understand what the July 1997 date and Section 10.46
6 referred to.

7 Q You said earlier that you weren't sure exactly when you had
8 contacted Participant 45 , but it was between 2012 and 2014?

9 A Yes. I don't remember. Yes.

10 Q Do you recall why you were particularly interested at that
11 point in understanding that July of 1997 date? Did it relate
12 to your appeal, for example, or to this lawsuit?

13 A Since I don't remember the timing, I don't remember which of
14 those was my concern. I know -- I can tell you this: When I
15 was working on the appeal, I had this question. I believe --
16 I believe I sent Participant 45 an E-mail and never got a response,
17 and then it was a long time later that I actually was able to
18 communicate with her by phone, like, maybe a year later or
19 so. I just don't remember.

20 Q Were either Participant 45 or Ms. Morrison copied on your E-mail
21 to your former colleagues?

22 A Yes.

23 Q Have you discussed with either of them whether they might be
24 members of the potential class in this lawsuit?

25 MS. RENAHER: I'm going to object that it's

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1 compound. I'm not actually sure that the answer to the prior
2 question is clear, because it wasn't either, and it got a
3 yes, and I think there's the same problem here.

4 MS. AMERT: Fair enough.

5 Q (BY MS. AMERT) Why don't you answer my compound question
6 about discussing with either of them whether they'll be a
7 class member or not, and then I can clarify from there.

8 A You have switched your line of questioning, and so I'm going
9 to make a clarification so that we both understand what I'm
10 responding to, if you don't mind.

11 As you can tell, I've had conversations with my fellow
12 colleagues about my lawsuit.

13 Q Uh-huh.

14 A And that they may have an interest in what's transpiring, and
15 that they should talk to my attorneys. As to whether they're
16 specifically in some class or not, no. So if you want to
17 define that first conversation as a conversation about
18 whether they would be a class member then, yes, I have, but
19 have I said that these are the part, or claims, you know this
20 is how we want to get the class certified, and you might be
21 within that and so on. No, I have not.

22 So it would help me answer your question in a way that's
23 not confusing for either of us if you could maybe clarify
24 what your intent is on the questioning. But what I've
25 answered so far has not been with respect to whether they're

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1 a class member or not, but it's been with respect to the fact
2 that there's this lawsuit. It might be a class action
3 lawsuit, who knows, but I don't know if they were a class
4 member or not, anything like that. So is that --

5 Q I --

6 A -- helpful?

7 Q -- appreciate that clarification.

8 A So, then, if you ask the question again, then maybe I can
9 answer it.

10 Q Sure. And let's do them one at a time just so that we're
11 clear exactly who we're talking about.

12 You described a conversation with Participant 45 where you
13 were seeking information from her about when non-exempt
14 employees became DDE employees. Have you had any other
15 communications with Participant 45 about this lawsuit?

16 A Yes.

17 Q What were those communications?

18 A She was on the E-mail distribution.

19 Q Did she respond to you, to the E-mail?

20 A I don't believe so.

21 Q Other than the conversation about non-exempt employees and
22 the E-mail that you copied her on, have you had any other
23 communications with Participant 45 about this lawsuit?

24 A No.

25 Q Was Ms. Morrison also copied on your E-mail?

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1 A No.

2 Q Okay. Have you had any conversations with Ms. Morrison about
3 this lawsuit, other than the conversation you described when
4 you were trying to understand when non-exempt employees
5 became DDE employees?

6 A If you'll go back in the record you'll see that I testified
7 about conversations I had had with her over lunch --

8 Q Okay.

9 A -- in which it was mentioned in social context, and I'm
10 adding to that the comment about the exchange that we had on
11 information about non-exempt employees, but that's all I'm
12 remembering at the time now.

13 Q Okay. All right. Has anyone else popped up in your memory?

14 A They only come one at a time.

15 Q Okay.

16 A No, no. Those were triggered because of conversation we had
17 about specific issues, but not at the moment, nothing else.

18 Q Other than the people that we've just discussed, have you
19 talked with any former or current Dow employees about whether
20 they might participate in this lawsuit?

21 A Can you ask the question one more time, please.

22 MS. AMERT: Can you read it back.

23 (Requested portion of the record
24 was read by the reporter.)

25 MS. RENAHER: I'll object that it's vague as to

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1 participate, but you can answer if you understand the
2 question.

3 THE WITNESS: By conversation, you include written
4 communication?

5 MS. AMERT: Yes.

6 THE WITNESS: So, obviously, there are people on
7 the Dow side of this litigation, Debbie Salo and others I
8 have communicated with about the lawsuit, and they're
9 participants in the process, so I guess to that extent, yes.
10 Q (BY MS. AMERT) Other than those individuals on the Dow side
11 of the litigation, have you communicated with any other
12 current or former Dow employees about their participation in
13 the litigation?

14 MS. RENAKER: And I'll object again that it's vague
15 as to participation. You can answer.

16 THE WITNESS: Again, the broadest scope of contact
17 would be the E-mail that I sent out, and I don't think I
18 communicated with anybody that I didn't E-mail or that I
19 didn't mention to you. I can't remember any other names at
20 this time.

21 Q (BY MS. AMERT) Okay. And we've talked about everyone you
22 remember who was copied on that E-mail, correct?

23 A Yes.

24 Q Okay.

25 A Well -- okay. No names, but my E-mail was redistributed by

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1 some people. I don't know who received it, but I got a call
2 from a gentleman in Louisiana who asked me some questions
3 about it. And I don't remember his name, I didn't know him,
4 but he had received the E-mail distributed by someone else,
5 and did call me.

6 Again, this would have been in that same spring/summer
7 of 2014 type time frame and, again, I encouraged him to read
8 the information on line and talk to my attorneys. So sorry,
9 I don't have a name, but there was a conversation.

10 Q Do you -- were you copied on any redistributions of your
11 E-mail?

12 A Not that I remember.

13 Q Did anyone tell you that they had redistributed your E-mail?

14 A Well, this gentleman told me he had received it, you know,
15 and I hadn't put him on the list, so obviously it had been
16 redistributed. And I trying to remember, at the time I knew
17 who redistributed it, and I don't remember now, and I believe
18 there were maybe four or five names that he distributed them
19 to. I believe it was a man.

20 Q So your recollection is that there was one person who
21 redistributed --

22 A Well, actually, I take that back. Sorry. Finish your --

23 Q No, if you want to correct what you just said, please go
24 ahead.

25 A Another name would be Participant 15 . I

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1 believe that she -- I believe that she -- I believe she was
2 the one that redistributed the E-mail; she works in
3 Louisiana.

4 Q Is she one of your former Dow co-workers?

5 A Yes.

6 Q Other than that E-mail, have you had any communications with
7 Participant 15 about this lawsuit?

8 A No.

9 Q Did you discuss with her the fact that she redistributed your
10 E-mail?

11 A I don't remember.

12 Q Do you know of anyone else who may have redistributed your
13 E-mail?

14 A No.

15 Q And I think you said that it was your recollection that
16 Participant 15 had distributed it to four or five other people,
17 is that correct?

18 A I believe so.

19 Q Did you hear from anyone else that Participant 15 distributed
20 your E-mail to?

21 A I don't think so. I don't remember.

22 Q So Mr. Johnston, we've been talking this morning about the
23 lawsuit that you've filed against the Dow Employees' Pension
24 Plan and the Retirement Board of the Company, correct?

25 A Yes.

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1 and as this says, I misspelled the name because at that time,
2 I think I had heard Debbie Sabo, but it was Salo, and she
3 wasn't in, so she had Cherie call me, and all she could say
4 was that, because apparently they outsource that calculation
5 to actuaries, and those people were needed to provide the
6 details of how the calculation was done, and apparently those
7 people had not yet responded to my request. And so she's
8 just saying that they've looked at it and said the estimate
9 was correctly calculated but, again, no details on how that
10 was done. And so she couldn't answer my questions, because
11 she was just filling in and, obviously, the document also, I
12 was seeking clarification on whether the SPD is the governing
13 legal document or not, and she clarified it is not. And
14 since I didn't have that document, I asked for it and she
15 said they would have to get it from legal. And so, again, I
16 asked for a copy of it immediately because I was going to be
17 meeting with legal counsel. And I don't remember when I
18 received it; I don't believe I had it at my meeting with
19 legal counsel, though.

20 Q Okay. Toward the end of your notes there's a sentence that
21 says, I asked for a copy immediately as I had to meet with
22 legal counsel on Wednesday, so need it by tomorrow evening.

23 Did I read that correct, your handwriting correctly?

24 A Yes.

25 Q Okay. For the moment, you can take my word for it that

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1 September 26, 2011 was a Monday. Would you interpret this
2 note to mean you were meeting with legal counsel the
3 following, the Wednesday directly after --

4 A 9/28, yes.

5 Q Okay.

6 MS. AMERT: Can we take a short break so he can
7 change the tape.

8 VIDEO TECHNICIAN: We're going off the record at
9 5:49.

10 (Whereupon, a short break was taken.)

11 VIDEO TECHNICIAN: We are back on the record at
12 5:53, beginning disk five.

13 MS. AMERT: Okay. Can I have --

14 Q (BY MS. AMERT) Mr. Johnston, I'm handing you a document
15 that's been marked Defendant's Exhibit 54. Defendant's
16 Exhibit 54 is a letter dated September 27, 2011 with,
17 addressed to you bearing production numbers P5286 and 87. Do
18 you have this letter in front of you, Mr. Johnston?

19 A Yes.

20 Q And I'll note that September 27, 2011 is the day after the
21 conversation with Cherie Farms that we were just discussing,
22 correct?

23 A Yes.

24 Q Do you recognize this letter?

25 A Yes.

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- 1 Q What is this letter?
- 2 A This is in response to my E-mail of September 19, 2011.
- 3 Q And in that E-mail you raised concerns about how your Pension
- 4 Benefit Estimate had been calculated, correct?
- 5 A Yes.
- 6 Q And about two-thirds of the way down the page -- sorry. This
- 7 letter is from Debbie Salo, who was a Pension Plan Manager
- 8 for Dow, correct?
- 9 A It's from Debbie Salo. I have no personal knowledge of her
- 10 title, other than what's in the letterhead, but --
- 11 Q Do you believe that she works for Dow in its Plan, Benefit
- 12 Plan Administration?
- 13 A Yes, in some capacity.
- 14 Q Okay. About two-thirds of the way down the first page of
- 15 this document, Ms. Salo writes, I have confirmed with the Dow
- 16 Plans's actuaries that your pension calculation was performed
- 17 correctly, and that the pension calculation in your
- 18 transitions binder is correct. Do you see that?
- 19 A Yes.
- 20 Q What did you understand that sentence to mean when you
- 21 received this letter?
- 22 A That I was no further along or no less when I wrote it in
- 23 terms of understanding the correctness of the calculations
- 24 because it's just a reaffirmation of what the estimate said,
- 25 it didn't provide any step-by-step of how the calculation was

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1 done.

2 Q Was it your understanding that Dow's position was that the
3 calculation was correct?

4 A Yes.

5 Q Okay. You can set that down, or set it aside.

6 MS. AMERT: Can I have 59, please.

7 Q (BY MS. AMERT) Mr. Johnston, I'm handing you a document
8 that's been marked Defendant's Exhibit 59, which is a
9 document titled, Termination, General Release, stamped
10 Received October 7, 2011, and with the production number, Dow
11 0005976 through 5983. Do you recognize in document,
12 Mr. Johnston?

13 A No, I do not.

14 Q Would you please turn to the last page of the document.

15 A Yes.

16 Q Do you see your signature on that document?

17 A Yes, I do.

18 Q Do you need a minute to look at the document?

19 A No.

20 Q Okay. Why -- do you understand what this document is?

21 A Yes.

22 Q What is it?

23 A It's the Termination, General Release Form that I was asked
24 to sign.

25 Q And did you sign it?

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- 1 A Yes, I did. That's my signature on the back.
- 2 Q When you said you don't recognize it, why did you say that?
- 3 A This is a modified copy of what I saw. This has stamps on
- 4 it, some numbers circled, stamp over here, a signature by a
- 5 Dow representative that I've not seen, so I didn't receive a
- 6 copy of this document.
- 7 Q Okay. Other than the additional annotations that you've
- 8 noted, is this the Termination, General Release that you
- 9 signed?
- 10 A It looks like that's all the annotations so, yes.
- 11 Q Okay. And on the last page next to your signature, it says,
- 12 Date of signing, October 3, 2011, correct?
- 13 A Yes.
- 14 Q Okay. So on October 3rd of 2011, when you signed this
- 15 Termination, General Release, you understood that you had a
- 16 disagreement with Dow about how your pension benefit should
- 17 be calculated. Is that a fair statement?
- 18 A Yes.
- 19 Q And you had previously expressed that you were concerned that
- 20 signing this release might impact your ability to pursue
- 21 action to correct your calculation, is that fair?
- 22 A Yes.
- 23 Q Okay. Why did you -- well, when you signed this release, did
- 24 you understand that you were waiving your right to do that?
- 25 A To do what?